

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 116 OF 1994

Bhupendra & Company ..Appellants

versus

N. P. Food Ltd., Bombay ..Respondents

Mr. H. V. Gala i/b. M/s. H. V. Gala & Co. for the
Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 11TH JANUARY, 2005

ORAL ORDER :

1. Heard learned counsel for the appellants. Respondents are served. Nobody is present for the respondents.

2. The appellants were the agents of the respondents for distribution agency. At the time of being appointed as agent, the appellants had deposited Rs.15,000/= with the respondent. The alleged amount was refundable by the defendants on termination of the distributorship. According to the plaintiffs - appellants the distributorship came to be terminated on 18.11.1988. On the same day the

plaintiffs under their covering letter requested for refund of the deposit amount and by returning the deposit receipt. Thereafter accounts were settled between the parties on 1.12.1988. The plaintiffs was found liable to pay to the defendants a sum of Rs.29,011/-. This amount was paid by the plaintiffs to the defendants without deducting Rs.15,000/- which the plaintiffs has paid to the defendants as deposit.

3. The plaintiffs thereafter filed a suit as a summary suit under Order XXXVII of the Code of Civil Procedure. Writ of summons was served upon the defendants on 1.8.1992. Affidavit of service was filed. The defendants failed to file their appearance within 10 days as required under Order XXXVII of the Code of Civil Procedure. The suit was therefore kept on the board for exparte decree.

4. On that day however trial court on its own accord considered all the pleadings and documents and came to the conclusion that the suit was barred by limitation. The plaintiffs had relied upon a letter dated 24.4.1989 which according to them was an acknowledgement of liability. The letter was as below:

"We are in receipt of your letter dated 17th

April, 1989 addressed to our Managing Director." In this connection we wish to inform you that we have advised our Accounts Department to do the needful. You will hear from our Accounts Department in due course. Please bear with us till then."

5. The lower court came to the conclusion that this letter could not be construed as an acknowledgement because it was merely an intimation that the matter has been referred to the Accounts Department for verification. Counsel for the appellants contended that firstly the matter was on board for ex parte decree on failure of the defendants to put up any appearance within 10 days and therefore according to him the decree should have followed. Secondly and alternatively he contended that the defendants have not only failed to put up any appearance but had not filed any reply and therefore the case of the appellants - plaintiffs should have been accepted as it is. Thirdly it was contended that if the contentions of the plaintiffs were to be taken into consideration then the entire plaint should have been read and when the plaintiffs themselves admit that distributorship agreement was terminated; that the plaintiffs paid to the defendants a sum of Rs.29,011/- without deducting Rs.15,000/= though the demand for refund of deposit was made even before

settlement of accounts. Therefore, according to the counsel for the appellants if in this background when actually there was no liability on the part of the plaintiffs towards defendants, the defendants on their own accord or in response to the plaintiffs letter wrote that they have advised their Accounts Department to do the needful. There was nothing to be done by the Accounts Department but to show the liability of the defendants vis-a-vis the plaintiffs. Mr. Gala also pointed out that in this letter dated 24.4.1989 there is no denial of liability at all. Mr. Gala stated that along with the plaint the plaintiffs has filed copy of their letter dated 17.4.1989, to which the defendants gave their reply on 24.4.1989. In this letter of the plaintiffs, plaintiffs specifically stated that distributorship agreement has been terminated and when their representative came to the office of the plaintiffs or business premises, the accounts were settled with regard to the security deposit of the plaintiffs. It was also stated that copy of the accounts was enclosed and he had promised repayment within 20 days. It was in reply in response to this letter of the plaintiffs dated 17.4.1989 that defendants wrote their letter dated 24.4.1989, the plaintiffs has been asked to bear with the defendants till the matter is considered by the Accounts Department. In the circumstances this

ought to have been considered by the court as acknowledgement. Secondly the matter was on board for exparte. Therefore for all these reasons the First Apsidal is required to be allowed. Hence, the Order:

ORDER

This First Appeal is allowed. Impugned order is set aside. The suit of the plaintiffs is decreed with costs, as prayed.

11.1.2005

(D.G. DESHPANDE, J.)